

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL'S REPORT**

4
5 **MUR 7001**

6 COMPLAINT DATE: 1/20/2016
7 NOTIFICATION DATE: 1/22/2016
8 RESPONSE DATE: 4/04/2016
9 ACTIVATION DATE: 7/20/2017

10
11 STATUTE OF LIMITATIONS: 8/9/2018 – 11/9/2018¹
12 ELECTION CYCLE: 2012

13 **COMPLAINANT:** Craig McDonald, Texans for Public Justice

14 **RESPONDENTS:** Ted Cruz for Senate and Bradley S. Knippa in his official
15 capacity as treasurer
16 Senator Rafael Edward "Ted" Cruz
17

18 **MUR 7002**

19 COMPLAINT DATE: 1/22/2016
20 NOTIFICATION DATE: 2/4/2016
21 RESPONSE DATES: 4/04/2016, 9/15/2017
22 ACTIVATION DATE: 7/20/2017

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24 STATUTE OF LIMITATIONS: 6/12/2018—11/9/2018
25 ELECTION CYCLE: 2012

26 **COMPLAINANTS:** Lawrence M. Noble, Campaign Legal Center
27 Fred Wertheimer, Democracy 21

28 **RESPONDENTS:** Ted Cruz for Senate and Bradley S. Knippa in his official
29 capacity as treasurer
30 Senator Rafael Edward "Ted" Cruz
31 Heidi Cruz²
32

¹ The Committee and Ted Cruz each tolled the statute of limitations for 390 days while the Commission's audit of the Committee's 2012 election cycle activities concluded.

² Due to an administrative oversight, Heidi Cruz was not notified of the MUR 7002 complaint. The matter was activated shortly after the audit was completed, the oversight was identified, and Heidi Cruz was notified of the complaint. Heidi Cruz then provided a 30-day tolling agreement in exchange for additional time to reply to the notification, which extended the statute of limitations for her potential violation to October 1, 2017.

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MUR 7003

COMPLAINT DATE: 1/22/2016
NOTIFICATION DATE: 2/1/2016
RESPONSE DATE: 4/04/2016
ACTIVATION DATE: 7/20/2017

STATUTE OF LIMITATIONS: 8/9/2018—11/9/2018
ELECTION CYCLE: 2012

COMPLAINANT:

Steven E. Schonberg

RESPONDENTS:

Ted Cruz for Senate and Bradley S. Knippa in his official
capacity as treasurer
Senator Rafael Edward "Ted" Cruz

MUR 7009

COMPLAINT DATE: 2/08/2016
NOTIFICATION DATE: 2/16/2016
RESPONSE DATE: 12/20/2016
ACTIVATION DATE: 7/20/2017

STATUTE OF LIMITATIONS: 8/9/2018—11/9/2018
ELECTION CYCLE: 2012

COMPLAINANT:

Charles Swofford

RESPONDENTS:

Ted Cruz for Senate and Bradley S. Knippa in his official
capacity as treasurer
Senator Rafael Edward "Ted" Cruz

RAD REFERRAL 16L-09

DATE REFERRED: 6/2/2016
NOTIFICATION DATE: 6/7/2016
RESPONSE DATE: 12/20/2016
ACTIVATION DATE: 7/20/2017

STATUTE OF LIMITATIONS: 8/9/2018—11/9/2018
ELECTION CYCLE: 2012

SOURCE:

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RESPONDENTS:

Ted Cruz for Senate and Bradley S. Knippa in his
official capacity as treasurer

1 **RELEVANT STATUTES** 52 U.S.C. § 30104(b)(3)(E)
2 **AND REGULATIONS:** 52 U.S.C. § 30116(a)(1)(A), (f)
3 11 C.F.R. § 104.3(d)(4), (a)(4)(iv)
4 11 C.F.R. § 100.52(b)(3), (4)
5 11 C.F.R. § 100.82(b),(c)
6 11 C.F.R. § 100.82(b),(e)
7 11 C.F.R. § 103.3(b)
8 11 C.F.R. § 110.1
9 11 C.F.R. § 110.9

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11 **INTERNAL REPORTS** Audit Report
12 **CHECKED:** Disclosure Reports

13
14 **FEDERAL AGENCIES** None
15 **CHECKED:**

16
17 **I. INTRODUCTION**

18 MURs 7001, 7002, 7003 and 7009 involve allegations that Senator Rafael Edward "Ted"
19 Cruz and Ted Cruz for Senate and Bradley Knippa in his official capacity as treasurer (the
20 "Committee"), violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by
21 misreporting that loans Cruz made to his 2012 Senate campaign were funded with Cruz's
22 "personal funds," rather than a line of credit with Citibank and a margin loan from a Goldman
23 Sachs brokerage account that he owned jointly with his wife. In MUR 7003, the Complaint
24 alleges that the violations were knowing and willful. In RAD Referral 16L-09, the Reports
25 Analysis Division ("RAD") also referred the Committee to the Office of General Counsel
26 ("OGC") for failing to properly report those loans.³ Additionally, the Complaint in MUR 7002
27 alleges that Senator Cruz and the Committee knowingly accepted excessive contributions from
28 Heidi Cruz, the Senator's wife, because her ownership share of the assets in the Goldman Sachs
29 account was used to secure the margin loan.

³ See Memorandum from Patricia C. Orrock, Chief Compliance Officer, FEC, to Daniel A. Petalas, Acting General Counsel, FEC (June 2, 2016).

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1 The Committee and Senator Cruz (“Cruz Respondents”) admit that Senator Cruz funded
2 loans to the Committee with a line of credit from Citibank and a margin loan from a Goldman
3 Sachs brokerage account. The Cruz Respondents also admit that the Committee failed to
4 disclose those loan sources on the reports the Committee filed with the Commission.⁴ The Cruz
5 Respondents nevertheless argue that the Commission should dismiss the violations because the
6 overall reporting of the loans in Senator Cruz’s 2012 Senate Financial Disclosure Report and in a
7 Miscellaneous Text Document (Form 99) filed with the Commission in 2016, was substantially
8 correct.⁵ In addition, Heidi Cruz denies that she made an excessive contribution to the
9 Committee because the Senator was entitled to use all of the funds in the Goldman Sachs account
10 under Texas state law.⁶

11 The available information shows that the Committee inaccurately reported that the source
12 of candidate loans totaling \$1,064,000 was Senator Cruz’s personal funds, and that it failed to
13 report required information about the true underlying sources of the loans. Accordingly, we
14 recommend that the Commission find reason to believe that Ted Cruz for Senate violated
15 52 U.S.C. § 30104(b)(3)(E) and 11 C.F.R. § 104.3(d)(4) and authorize pre-probable cause
16 conciliation with the Committee. We also recommend that the Commission find no reason to
17 believe that Senator Cruz individually violated 52 U.S.C. § 30104(b)(3)(E) and 11 C.F.R.
18 § 104.3(d)(4).

⁴ Resp. of Cruz Respondents to MURs 7001, 7002, and 7003 (Apr. 4, 2016) (“Resp. of Cruz Respondents”) at 1. The Cruz Respondents filed a single response to MURs 7001, 7002, and 7003 and asked the Commission to consider that response as their response to MUR 7009, as well as their response to the RAD Referral. E-mail from Chris Gober, counsel for the Cruz Respondents, to Jeff S. Jordan, Complaints Examination and Legal Administration (“CELA”), FEC (May 18, 2016, 12:51 EST); e-mail from Chris Gober to CELA, FEC (Dec. 20, 2016, 11:49 EST).

⁵ Resp. of Cruz Respondents at 3.

⁶ Resp. of Heidi Cruz at 2-4 (Sep. 15, 2017).

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1 Finally, for the reasons discussed below, we recommend that the Commission exercise its
2 prosecutorial discretion and dismiss the allegation that Heidi Cruz made, and the Committee
3 accepted, an excessive contribution to the Committee.⁷

4 II. FACTS

5 In 2012, Senator Ted Cruz was a U.S. Senate candidate in Texas and Ted Cruz for Senate
6 was his authorized campaign committee. During the 2012 Senate campaign, the Committee's
7 disclosure reports showed that Cruz made loans to the Committee totaling \$1.43 million from
8 "personal funds."⁸ Most of the loans were provided shortly before the primary election on May
9 29, 2012, and the primary runoff election on July 31, 2012. In a 2013 interview with the *New*
10 *York Times*, Senator Cruz reportedly stated that he and his wife, Heidi Cruz, a managing director
11 at Goldman Sachs, agreed to "liquidate" their "entire net worth" to free up the funds necessary
12 for the candidate loans.⁹

13 Senator Cruz filed his United States Senate Financial Disclosure Reports for 2012 ("2012
14 Senate Report") on May 15, 2013.¹⁰ The 2012 Senate Report shows that Senator Cruz took out
15 two loans in 2012: a "line of credit" from Citibank and a "margin loan" from Goldman Sachs.¹¹

⁷ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

⁸ Ted Cruz for Senate 2011 April Quarterly Report at 229, 263 (Apr. 15, 2011); 2012 July Quarterly Report at 1,069, 1,196-97 (July 15, 2012); 2012 October Quarterly Report at 1,677, 1,872-71 (Oct. 15, 2012).

⁹ See Ashley Parker, *A Wife Committed to Cruz's Ideals, but a Study in Contrasts to Him*, N.Y. Times, Oct. 23, 2013.

¹⁰ See United States Financial Disclosure Report for Annual and Termination Filers for 2012. <https://efdsearch.senate.gov/search/view/paper/12EFF92A-4EA8-44ED-AD2E-A32202BE5771/>.

¹¹ Senator Cruz initially disclosed the 2012 loans on his 2011 Senate Financial Disclosure Report, which was filed on July 12, 2012 and reflects that he incurred the loans in 2012. See United States Financial Disclosure Report for New Employee and Candidate Reports for 2011. <https://efdsearch.senate.gov/search/view/paper/7DA1762C-66E3-4CE2-8E6E-623FE52D7809/>

1 Each loan is listed in the \$250,000 to \$500,000 range,¹² with an interest rate of “prime floating”
2 the Citibank loan and “3% floating” for the margin loan from Goldman Sachs.¹³ The Report
3 does not explain the purpose of the loans or indicate that the loans are connected to the Senate
4 campaign.

5 On January 13, 2016, almost four years after Senator Cruz made the loans in question to
6 his campaign, the *New York Times* reported that the 2012 Senate Report contradicted his story
7 about having liquidated family assets to fund the campaign loans made during the 2012
8 election.¹⁴ Specifically, the *New York Times* reported that a Goldman Sachs margin loan and a
9 Citibank line of credit, which both appear on the 2012 Senate Report but not on any FEC
10 disclosure reports, were the underlying sources of his candidate loans.¹⁵

11 On January 14, 2016, the day after the *New York Times* article was published, the
12 Committee filed a Miscellaneous Text Document (Form 99) with the Commission stating that
13 the margin loan and line of credit had been “inadvertently omitted” from the relevant 2012 FEC
14 disclosure reports.¹⁶ The Form 99 also provided the following information on the loans:

¹² See United States Financial Disclosure Report for Annual and Termination Filers for 2012.
<https://efdsearch.senate.gov/search/view/paper/12EFF92A-4EA8-44ED-AD2E-A32202BE5771/>.

¹³ See Senate Report for 2012 at 8. An amendment to the 2012 report added “on demand” under the Term of
loan for each of the loans. See [https://efdsearch.senate.gov/search/view/paper/929B15B0-D2E8-4B91-95CC-
EF4DC76E9AF8/](https://efdsearch.senate.gov/search/view/paper/929B15B0-D2E8-4B91-95CC-EF4DC76E9AF8/)

¹⁴ See Mike McIntire, *Ted Cruz Didn't Report Goldman Sachs Loan in a Senate Race*, N.Y. Times, Jan. 13,
2016, at 3 (attached to MUR 7001 Compl. and MUR 7009 Compl. and cited by MUR 7002 Compl. ¶ 7 n.5), Mike
McIntire, *Ted Cruz Failed to Report a Second Campaign Loan in 2012*, N.Y. Times, Jan. 15, 2016 (attached to
MUR 7003 Compl. and cited by MUR 7002 Compl. ¶ 10 n.9). The 2012 Senate Report does not reflect that assets
were liquidated.

¹⁵ *Id.*

¹⁶ Ted Cruz for Senate, Misc. Rpt. to FEC (Letter from Bradley Knippa, Treasurer, to RAD) (Jan. 14, 2016).

1 "Goldman Sachs Margin Loan, Incurred 2012, 3% Floating Interest Rate; Citibank Line of
2 Credit, Incurred in 2012, Prime plus floating Interest Rate."¹⁷

3 Following receipt of the Form 99, RAD spoke to the Committee's treasurer, assistant
4 treasurer, or counsel on multiple occasions, instructed them on reporting requirements for loans
5 funded by a financial institution, and urged them to amend the Committee's disclosure reports to
6 correctly disclose the required information for each loan on Schedules C (Loans) and C-1 (Loans
7 and Lines of Credit from Lending Institutions).¹⁸ The Committee initially agreed to file the
8 amendments, requesting additional time to gather the documentation, but then told RAD that it
9 was hesitant to do so given that complaints had been filed and an enforcement process initiated.¹⁹
10 RAD instructed the Committee that it should still file amendments to the reports in which the
11 loans were disclosed and sent the Committee Requests for Additional Information for the 2012
12 July Quarterly and 2012 October Quarterly Reports, which covered the periods when the loans
13 were incurred.

14 The Committee showed the loans in question as first
15 incurred during the 2012 July Quarterly and October Quarterly reporting periods. Because of
16 this, the RFAIs were sent on these two reports. However, RAD advised the committee to amend
17 all reports in which the loans were disclosed to make corrections.²⁰ The RFAIs requested that
18 the Committee amend its reports to provide correct loan information and submit the appropriate

¹⁷ *Id.*

¹⁸ Referral at 2-3.

¹⁹ *Id.*

²⁰ Senator Cruz's amended 2012 Senate Report notes that both the Citibank Line of Credit and Goldman Sachs Margin Loan were paid off in 2012.

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1 supporting schedules.²¹ In response to the RFAs, the Committee filed another Form 99 stating
2 that it had "proactively provided additional information."²² On May, 4, 2016, RAD advised the
3 Committee that its response to the RFAs was inadequate and the matter would be referred for
4 further review.²³ The Committee replied that it would not be filing any amendments at that time
5 and has not done so to date.²⁴

6 The Commission also conducted an audit of the Committee's 2012 election cycle activity
7 and the Commission issued the Final Audit Report ("FAR") on June 22, 2017.²⁵ The
8 Commission approved a finding that the Committee "failed to properly disclose \$1,064,000 in
9 candidate loans that originated with commercial lenders and failed to file the correct schedules C
10 and C-1."²⁶ The FAR determined that of the \$1.43 million in loans that Senator Cruz reported as
11 having come from his personal funds, he actually borrowed \$800,000 from Goldman Sachs
12 (\$400,000 on 5/18/12; \$250,000 on 7/23/12; and \$150,000 on 8/7/12) and \$264,000 (on 5/22/12)
13 from Citibank (\$1,064,000 total).²⁷ Specifically, Senator Cruz obtained the \$800,000 from
14 Goldman Sachs via three margin loans with a 3% floating interest rate secured by assets in a
15 brokerage account jointly held with his wife, Heidi Cruz.²⁸ Senator Cruz obtained the line of

²¹ *Id.*

²² *Id.* at 3; Ted Cruz for Senate, Misc. Rpt. To FEC (Letter from Bradley Knippa, Treasurer, to RAD) (Mar. 8, 2016).

²³ *Id.*

²⁴ *Id.* at 4; Resp. at 2 (April 5, 2016).

²⁵ Final Audit Report of the Commission on Ted Cruz for Senate (Jun. 22, 2017).

²⁶ *Id.* at 3.

²⁷ *Id.* at 8. The FAR found that \$366,000 in loans from Senator Cruz to the Committee were from Cruz's personal funds.

²⁸ Senate Rpt. at 8. A margin loan is a financial instrument that allows account holders to borrow from a brokerage firm against the value of assets in their portfolio.

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1 credit from Citibank with a floating interest rate that enabled him to draw cash advances against
2 a limit of \$275,000; unlike the Goldman Sachs margin loans, no person other than the candidate
3 himself was liable for the Citibank line of credit.²⁹ The documentation available from the
4 Cruzes' Goldman Sachs account indicates that the account was opened on January 17, 2006, as
5 an account held by Senator Cruz and his wife as Joint Tenants with Rights of Survivorship.³⁰
6 The Customer Agreement for the account states that ownership "will be held in the manner
7 indicated in the title of the account."³¹ The available account documentation does not indicate
8 each account holder's ownership interest in the account.

9 III. LEGAL ANALYSIS

10 A. Alleged Failure to Disclose Required Information about Candidate Loans

11 The candidate's principal campaign committee must report all loans derived from an
12 advance on the candidate's brokerage account, credit card, home equity line of credit, or other
13 line of credit available to the candidate.³² The disclosure report must identify the person who
14 makes a loan to the committee during the reporting period, together with the identification of any
15 endorser or guarantor of such loan, and the date and amount or value of such loans.³³

16 Commission regulations provide that a committee must disclose information about loans from

²⁹ Citibank, N.A., Revolving Credit/Time Note, Variable Rate (Individuals/Lawyers) at 1, dated May 11, 2012 (signed by Rafael E. Cruz) (providing that the rate of interest shall be the highest of: (1) Citibank's base rate; (2) the Federal Funds Rate plus 2.0%; or (3) the LIBOR rate plus 2.0%). Cruz's 2012 Senate Disclosure stated only that the line of credit had a "prime – floating" interest rate. Senate Report at 8.

³⁰ See Goldman Sachs New Account Information for Individuals, Multi-Parties and Custodianships for the Cruzes Brokerage Account. Attach. 1.

³¹ See Goldman Sachs Customer Agreement. Attach 2.

³² 11 C.F.R. § 100.83(e).

³³ See 52 U.S.C. § 30104(b)(3)(E). 11 C.F.R. § 104.3(a)(4)(iv).

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1 the candidate to the campaign on Schedules C and C-1.³⁴ If the candidate finances a loan to the
2 campaign with an underlying loan or line of credit, section 104.3(d)(4) of the Commission's
3 regulations requires the committee to disclose on Schedule C-1, among other things: (1) date,
4 amount, and interest rate of the loan or line of credit; (2) name and address of the lending
5 institution; and (3) types and value of collateral or other sources of repayment that secured the
6 loan.³⁵

7 Although Senator Cruz used funds borrowed from Citibank and Goldman Sachs to make
8 loans totaling \$1,064,000 to his 2012 Senate campaign, the Committee inaccurately reported on
9 Schedule C that he made the loans to the Committee with his "personal funds," and failed to file
10 a Schedule C-1 to properly disclose the details of the margin loan and line of credit. Thus, the
11 Committee did not comply with the reporting requirements of the Act or the Commission's
12 regulations.

13 The Cruz Respondents admit that the Committee failed to provide the required
14 information regarding the loans and concede that they have yet to amend their reports.³⁶ They
15 argue, however, that the matter should be dismissed because the public record has been corrected
16 as a result of the information disclosed in the 2012 Senate Report filed in May 2013, and in the
17 Form 99 filed in January 2016.³⁷ Respondents specifically cite to MUR 5421 (Kerry for

³⁴ 11 C.F.R. § 104.3(d).

³⁵ *Id.* § 104.3(d)(4).

³⁶ As mentioned above, Respondents explain that the Committee refrained from submitting amendments because "the complaints [have] already been filed and [given] the confidentiality of the enforcement process." [add internal cite to previous mention]

³⁷ Resp. of Cruz Respondents at 3.

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1 President) and argue that their reporting meets the “substantially correct” standard set forth in
2 that matter³⁸

3 In MUR 5421, the Commission approved a recommendation to dismiss the committee’s
4 inaccurate reporting of a series of loans the candidate made to his principal campaign committee
5 where it inaccurately reported the date on which the candidate accessed the loan instead of the
6 date he incurred one of the loans, and inaccurately reported the total fair market value of the
7 collateral for the loan rather than simply the candidate’s share of the property.³⁹ The General
8 Counsel’s Report recommended, and the Commission approved, no further action on the
9 inaccurate reporting because the reporting was substantially correct in that it “overall reporting
10 of the loans otherwise accurately disclosed the precise flow of money” from the bank to the
11 campaign.⁴⁰

12 In this matter, unlike MUR 5421, the overall reporting of the loans was not substantially
13 correct and did not disclose the flow of the money. The Committee erroneously reported on a
14 Schedule C that the source of the loans was the candidate’s “personal funds” when the funds
15 were actually derived from Citibank and Goldman Sachs. Although Cruz reported the existence
16 of the loans on his 2012 Senate Report filed in May 2013, the reports do not include all the

³⁸ *Id.*; see also Second General Counsel’s Rpt. at 9, MUR 5421 (John Kerry for President) (concluding that the reporting of the loan in question was substantially correct because the reporting of the loan was “accurate in most respects”). Respondents also cite MUR 6386 (Steve Fincher for Congress) for the proposition that a civil penalty is unwarranted for “this type of reporting error” for a legal loan with subsequent clarification. Resp. at 3. But, this matter is distinguishable from MUR 6386, where the Commission could not agree as to whether it should impose a civil penalty after the committee *had* amended its report to disclose the required loan information. See First General Counsel’s Report at 6, MUR 6386; Certification, MUR 6386 (June 4, 2011). See also MUR 5198 (Cantwell) (no civil penalty where Committee amended reports prior to initiation of matter).

³⁹ Second General Counsel’s Rpt. at 9, 10, 11, MUR 5421 (John Kerry for President). The loans were comprised of smaller loans the candidate obtained from draws on personal lines of credit, totaling \$1.1 million, and a larger loan from Mellon Trust, worth \$6.4 million.

⁴⁰ *Id.*; Certification, MUR 5421 (Dec. 12, 2005).

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1 details about the terms of the loans, nor does it disclose that Cruz used those loans to finance his
2 campaign.⁴¹ In fact, at the time Senator Cruz made the loans to his campaign, he reportedly
3 made a public statement indicating that he financed his campaign by liquidating assets, and not
4 by taking out loans against assets.⁴² Thus, it was not until 2016 that the Committee first linked
5 the Citibank and Goldman Sachs loans to Cruz's campaign. Further, the Committee has yet to
6 amend any of the relevant FEC disclosure reports, has never filed a Schedule C-1 for the loans,
7 and the Form 99 lacks some of the information required to be disclosed on Schedule C-1,
8 including: (1) the dates and amounts of the loans; and (2) the types and value of collateral or
9 other sources of repayment that secured the loan.⁴³

10 We therefore recommend that the Commission find reason to believe that Ted Cruz for
11 Senate violated 52 U.S.C. § 30104(b)(3)(E) and 11 C.F.R. § 104.3(d)(4) by failing to disclose
12 accurate information about \$1,064,000 in candidate loans in its initial filings for the loans on the
13 2012 July and October Quarterly Reports and in subsequent reports detailing the loans. Further,
14 because the complaints did not articulate any factual or legal basis for finding Senator Cruz
15 personally liable for the reporting violation, and we see no basis under the facts of this case to
16 hold the candidate individually responsible for filing accurate and complete disclosure reports,
17 we recommend that the Commission find no reason to believe that Senator Cruz violated
18 52 U.S.C. § 30104(b)(3)(E) and 11 C.F.R. § 104.3(d)(4).⁴⁴

⁴¹ The 2012 Senate Report include the following information: (1) name of the lending institution; (2) year the loan was incurred; (3) approximate amount of the loan within a very broad range; (4) interest rate; and, (5) term of loan.

⁴² See n.10, *supra*.

⁴³ See 11 CFR. § 104.3(d)(4) (setting forth information required on schedule C-1).

⁴⁴ See 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.14(d). See, e.g., Factual & Legal Analysis at 3, MUR 6066 (Hartley-Nagle for Congress, *et al.*) (finding no reason to believe that a candidate violated alleged reporting

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1 We do not recommend that the Commission find that the Committee's reporting
2 violations are knowing and willful as alleged by the Complaint in MUR 7003. That Complaint
3 does not allege sufficient facts to demonstrate that the Respondents intentionally failed to
4 disclose the underlying sources despite a known legal obligation.⁴⁵ Further, it does not appear
5 that the Senator "secretly"⁴⁶ took out the loans from Goldman Sachs and Citibank as alleged,
6 given that he disclosed them on his Senate Financial Disclosure Report.

7 **B. Alleged Excessive Contributions By Candidate's Spouse**

8 No person, including a candidate's family members, shall make contributions to any
9 candidate or authorized committee with respect to any election which, in the aggregate, exceed
10 the Act's contribution limit, which was \$2,500 during the 2012 election cycle.⁴⁷ Moreover, no

violations because Complainant did not articulate any factual or legal basis for finding the candidate personally liable).

⁴⁵ A violation of the Act is knowing and willful when the "acts were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H3778 (daily ed. May 3, 1976). This does not require proving knowledge of the specific statute or regulation the respondent allegedly violated. *See United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. 2013) (citing *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish that a violation is willful, the government needs to show only that the defendant acted with knowledge that her conduct was unlawful, not knowledge of the specific statutory provision violated)). Rather, it is sufficient to demonstrate that a respondent "acted voluntarily and was aware that his conduct was unlawful." *Id.* (internal quotation marks omitted). This awareness may be shown through circumstantial evidence, such as a "defendant's elaborate scheme for disguising" her actions, or other "facts and circumstances from which the jury reasonably could infer [the defendant] knew her conduct was unauthorized and illegal." *United States v. Hopkins*, 916 F.2d 207, 213-15 (5th Cir. 1990) (internal quotation marks omitted). As the *Hopkins* court noted, "It has long been recognized that 'efforts at concealment [may] be reasonably explainable only in terms of motivation to evade' lawful obligations." *Id.* at.214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

⁴⁶ MUR 7003 Compl. at 1.

⁴⁷ 52 U.S.C. § 30116(a)(1)(A); Contribution Limits for 2011-2012, <https://www.fec.gov/updates/contribution-limits-for-2011-2012>. *See Buckley*, 424 U.S. at 51 n.57, 53 n.59 (upholding the constitutionality of contribution limits as to family members, reasoning that, "[a]lthough the risk of improper influence is somewhat diminished in the case of large contributions from immediate family members, we cannot say that the danger is sufficiently reduced to bar Congress from subjecting family members to the same limitations as nonfamily contributors").

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1 candidate or political committee shall “knowingly accept” a contribution that exceeds the
2 applicable contribution limit.⁴⁸

3 Federal candidates, however, may make unlimited contributions from their own “personal
4 funds” to their authorized campaign committees.⁴⁹ The Act and Commission regulations provide
5 that “personal funds” are (a) amounts derived from any asset that, under applicable State law, at
6 the time the individual became a candidate, the candidate had legal right of access to or control
7 over, and with respect to which the candidate had legal and rightful title; or an equitable interest;
8 and (b) income received during the current election cycle of the candidate, including a salary and
9 other earned income from bona fide employment; dividends and proceeds from the sale of the
10 candidate’s stocks or other investments; gifts of a personal nature that had been customarily
11 received by the candidate prior to the beginning of the election cycle; and, a portion of assets that
12 are jointly owned by the candidate and the candidate’s spouse equal to the candidate’s share of
13 the asset under the instrument of conveyance or ownership, but if no specific share is indicated
14 by an instrument of conveyance or ownership, the value of ½ of the property.”⁵⁰

15 When a candidate uses “personal funds” derived from assets that are jointly owned with
16 his spouse, the amount is limited to “the candidate’s share of the asset under the instrument of
17 conveyance or ownership;” if the instrument is silent, the Commission will presume that the
18 candidate holds a one-half ownership interest.⁵¹ A candidate’s spouse is permitted to act as the

⁴⁸ 52 U.S.C. § 30116(a)(f).

⁴⁹ 11 C.F.R. § 110.10; *see also Buckley v. Valeo*, 424 U.S. 1, 54 (1976) (holding restrictions on candidate’s expenditures from personal funds unconstitutional).

⁵⁰ 52 U.S.C. § 30101(26); 11 C.F.R. § 100.33(a), (b).

⁵¹ 52 U.S.C. § 30101(26)(C); 11 C.F.R. § 100.33(c). In some past matters, the Commission has determined that joint *bank accounts* are not subject to the one-half ownership presumption at 52 U.S.C. § 30101(26)(C) and the candidate may utilize the entire amount as “personal funds” because each account holder of the joint bank account had access and control over the whole account under the applicable state law. *See, e.g.*, MURs 2754 (Lowey) 2292

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1 endorser, guarantor, or co-signor of a loan obtained by the candidate but is deemed to have
2 contributed an amount equal to the portion of the loan for which he or she agreed to be liable.⁵²

3 But in the case of a secured brokerage loan or line of credit, there is no contribution from
4 the spouse if the candidate's share of the collateral equals or exceeds the amount of the loan used
5 for the campaign.⁵³ For example, in MUR 5421 (Kerry for President), the complaint alleged that
6 the candidate's spouse made excessive contributions to the Committee when the candidate made
7 a loan to his campaign that was funded with a line of credit secured by a piece of property he
8 owned jointly with his wife. The Commission found reason to believe that the candidate's
9 authorized committee accepted an excessive contribution from the spouse because the factual
10 record available at that time indicated that the candidate's interest in the jointly owned collateral
11 property may have been less than the amount of the loan.⁵⁴ In MURs 4830 and 4845 (Udall),
12 which, like the current matter, involved loans secured by a brokerage account owned jointly by
13 the candidate and his wife, the Commission determined that the loans from the candidate to the
14 campaign "were based entirely on [the candidate's] half of the assets jointly controlled with" his

(Stein) and 3505 (Klink). *See also* OGC Comments on Bauer for President 2000, Inc. – Proposed Audit Report (LRA #543), May 6, 2002, at 6 (discussing history of joint bank account exception to the one-half ownership presumption). But the Commission has not so concluded in cases involving *loans* obtained by a candidate using jointly owned assets, as reflected in MURs 5421, 4530, and 4845, which are discussed below. *See* OGC Memorandum to Commission on Revision of Regulation Pertaining to Candidate's Use of Property in Which Spouse Has an Interest, Agenda Doc. #81-181, Oct. 30, 1981, at 7 n.3.

⁵² 11 C.F.R. §§ 100.52(b)(3)-(4), 100.83(c). A reduction in the unpaid balance of the loans reduces proportionately the amount endorsed or guaranteed by the spouse. *Id.* §§ 100.52(b)(3), 100.83(b).

⁵³ *Id.* §§ 100.52(b)(4), 100.83(b)(1)-(2).

⁵⁴ *See* Factual and Legal Analysis at 11, MUR 5421 (John Kerry for President). The Commission subsequently took no further action on this allegation after the investigation revealed that the spouse's interest in the property did not serve as collateral for the loan. *See* Second General Counsel's Report at 6-7, MUR 5421; Certification, MUR 5421 (Dec. 12, 2005).

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1 spouse.⁵⁵ Thus, the Commission found no reason to believe that the spouse made an excessive
2 contribution to the candidate's authorized committee.⁵⁶

3 In this matter, the Commission's audit of the Committee confirmed that Senator Cruz
4 made three loans to the campaign totaling \$800,000 using assets from a Goldman Sachs
5 brokerage account owned jointly with his wife, Heidi Cruz, as security.⁵⁷ As explained above, if
6 Senator Cruz's ownership share of the assets used as security for the loan is less than the amount
7 of the loan used for the campaign, then his wife will have made a contribution to the campaign.

8 The available record, including documents and information obtained through the
9 Commission's recently concluded audit of the Committee, does not include the instrument of
10 conveyance or ownership for the Goldman Sachs account.⁵⁸ The unsworn Response of Heidi
11 Cruz asserts that the assets used to collateralize the margin loans were acquired during the
12 marriage and were subject to the community property rules of Texas.⁵⁹ If true, Senator Cruz
13 would have a full ownership interest over the entire amount in the account and no excessive
14 contribution would result. It is unclear, however, whether those assets were in fact community

⁵⁵ Factual and Legal Analysis at 8, MURs 4830/4845.

⁵⁶ *Id.* at 9.

⁵⁷ FAR at 3. The assets in the brokerage account include cash, deposits and money market funds, stocks and bonds.

⁵⁸ In analyzing the issue of whether Heidi Cruz may have made an excessive contribution to the Committee as a result of the Goldman Sachs loan, the Audit Division assigned one-half of the value of the account to the candidate. See Supplemental Comments on Resubmitted Draft Final Audit Report – Ted Cruz for Senate (LRA #976) at 2, 3 (Feb. 24, 2017). Based on that analysis, the Audit Division identified only one instance where an amount exceeding 50 percent of the value of the account was used, and that deficit was quickly remedied (within 60 days) when a loan payments was made. *Id.* Thus, there was no recommended finding on this issue. The analysis in this report does not assign one-half the value of the account to Senator Cruz, instead relying on the plain language of the regulations at 11 C.F.R. §§ 100.33(c) and 100.52(b)(4) and MURs 5124 and 4830/4845 which examine whether the candidate's actual share of the collateral equals or exceeds the amount of the loan used for the campaign.

⁵⁹ Community property in Texas is defined as all property acquired during marriage other than separate property. Tex. Fam. Code Ann. §§ 3.002, 3.003.

1 property and whether Senator Cruz had full ownership rights over those assets.⁶⁰ Respondents
2 submitted no documentation to support the assertion, and the account documentation available
3 from the audit shows that the brokerage account was owned by the Cruzes as "Joint Tenants with
4 Rights of Survivorship."⁶¹ Texas law provides that a party to a joint account may legally
5 withdraw money from such an account, but a joint tenancy does not necessarily confer
6 ownership over amounts in the account.⁶²

7 The Commission could seek documentation to resolve the question of what share of the
8 assets in the brokerage account was owned by Senator Cruz and, thus, whether Heidi Cruz made

⁶⁰ Even property acquired during the marriage can be characterized as separate property. For example, if during the marriage, property is acquired by gift, will, or inheritance, or property is purchased with proceeds from separate property, such property is considered separate property; not community property. Texas Const. Art. XVI § 15; Tex. Fam. Code Ann. § 3.001(2). Further, salary, wages and income from separate property earned during the marriage, although community property, are the sole management community property of the spouse who earned the wages or owns the property. Tex. Fam. Code Ann. § 3.102(a). In addressing fraud perpetrated by one spouse in disposing of the other spouse's interest in community property, Texas courts have stated that "[e]ach spouse owns an undivided one-half interest in all community assets and funds regardless of which spouse has management and control." *Massey v. Massey*, 807 S.W. 2d 391, 401-02 (Tex. App. 1991) (citing *Carnes v. Meador*, 533 S.W.2d 365, 371 (Tex.App.1975)).

⁶¹ See Your Goldman Sachs New Account Information, Account Name (Rafael E. and Heidi S. Cruz), and Account Type (JTWROS) (opened Jan. 17, 2006). Attach 1. The Cruzes are domiciled in Texas and it appears that the account was opened in Texas. Attachment 1. Account Statements for the period March through July 2012, shows account activity consisting mostly of dividends or interest on stocks, funds, and bonds. Account documentation states that the agreement shall be governed by New York law without reference to its choice of law doctrine, however, and it is unclear whether such statements in the documentation would supersede Texas law. See *Access Telecom, Inc. v. MCI Telecomm. Corp.*, 197 F.3d 694, 705 (5th Cir. 1999) ("Texas contractual choice-of-law provisions are ordinarily enforced if the chosen forum has a substantial relationship to the parties and the transaction" (citing *De Santis v. Wackenhut*, 793 S.W.2d 670, 677-78 (Tex.1990)). "However, a choice-of-law provision will not be applied if another jurisdiction has a more significant relationship with the parties and their transaction than the state they choose, that jurisdiction has a materially greater interest than the chosen state, and the jurisdiction's fundamental policy would be contravened by the application of the law of the chosen state." *Id.* at 705. Texas courts rely on *Restatement (Second) of Conflict of Laws* § 187 to decide whether other considerations trump the parties' choice of law. *DeSantis v. Wackenhut*, 793 S.W.2d at 677-78.

⁶² Tex. Est. Code Ann. § 113.102 (as to "all parties to a joint account, the account belongs to the parties in proportion to the net contributions by each party to the sums on deposit unless there is clear and convincing evidence of a different intent"); see *In re Marriage of McNelly*, No. 14-13-00281-CV (Tex. App. – Houston [14th Dist.] May 15, 2014) (mem. op.) (citing to Tex. Est. Code Ann. § 113.102 and holding that a spouse does not acquire a one-half ownership interest in the other spouse's separate property just because that property was deposited into a joint brokerage account); see also *Hicks v. State*, 419 S.W.3d 555, 559 (2013) (holding that though a party to a joint account is authorized to withdraw funds from the account, it does not establish that the party owns the funds or divest title from the actual owner).

1 an excessive contribution to the campaign. We do not recommend, however, that the
2 Commission further pursue this allegation. The Commission has already conducted an audit of
3 the Committee, considered this issue, and made no findings. Under these circumstances, we do
4 not think that it would be a prudent use of the Commission's resources to further investigate the
5 ownership of the account. Accordingly, we recommend that the Commission dismiss as a matter
6 of prosecutorial discretion the allegations that Senator Cruz and the Committee violated
7 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by knowingly accepting excessive contributions and
8 that Heidi Cruz violated 52 U.S.C. § 30116(a)(1)(A) by making excessive contributions to Ted
9 Cruz for Senate.

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1 **V. RECOMMENDATIONS**

- 2 1. Open a Matter Under Review in RAD Referral 16L-09;
- 3 3. Find reason to believe that Ted Cruz for Senate and Bradley Knippa in his official
4 capacity as treasurer violated 52 U.S.C. § 30104(b)(3)(E) and 11 C.F.R.
5 § 104.3(d)(4) by failing to disclose required information about candidate loans;
- 6 4. Find no reason to believe that Senator Cruz violated 52 U.S.C. § 30104(b)(3)(E)
7 and 11 C.F.R. § 104.3(d)(4) by failing to disclose information about candidate
8 loans;
- 9 5. Dismiss the allegations that Senator Cruz and Ted Cruz for Senate and Bradley
10 Knippa in his official capacity as treasurer violated 52 U.S.C. § 30116(f) and
11 11 C.F.R. § 110.9 by knowingly accepting excessive contributions and that Heidi
12 Cruz violated 52 U.S.C. § 30116(a)(1)(A) by making excessive contributions.
- 13 6. Authorize conciliation with Ted Cruz for Senate and Bradley Knippa in his
14 official capacity as treasurer, prior to a finding of probable cause to believe;
- 15 7. Approve the Factual and Legal Analysis;
- 16 8. Approve the proposed Conciliation Agreement; and
- 17 9. Approve the appropriate letters.

18 Lisa J. Stevenson
19 Acting General Counsel

20
21
22 Dated: 5/23/18

23 BY: Kathleen M. Guith
24 Kathleen M. Guith
25 Associate General Counsel for Enforcement

26
27 Jin Lee
28 Jin Lee
29 Acting Assistant General Counsel

30
31 Dominique Dillenseger
32 Dominique Dillenseger
33 Attorney
34

35
36 Attachments:

- 1 1. Goldman Sachs New Account Information for Individuals, Multi-Parties and
- 2 Custodianships (Cruz Brokerage Account)
- 3 2. Goldman Sachs Customer Agreement (Cruz Brokerage Account)
- 4
- 5
- 6

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New Account Information for Individuals, Multi-Parties and Custodianships

For Use with the Following Account Types:
Individual, Joint Tenant with Rights of Survivorship,
Tenants in Common, Community Property, IRA and Custodianship

Contents

- A *Your Goldman Sachs Account*
- B *Personal Information*
- C *Investment Experience and Financial Information*
- D *Account Services Information*
- E *Investment Advisory Account Information*
- F *Managed Account Strategies*
- G *Brokerage Account Information*
- H *Limited Discretionary Trading Authorization*
- I *Third Party Agent Authorization*
- J *Account Terms and Conditions and Signature Page*

*IRS Form W-9
Request for Taxpayer Identification
Number and Certification.
(Appropriate Form W-8 will be
provided if applicable.)*

In accordance with government regulations, financial institutions are required to obtain, verify, and record information that identifies each person or entity who opens an account.

When you open an account, we will ask for name, address, identification number and other information that will allow us to identify the customer. We may also ask to see government-issued identifying documents.

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Your Goldman Sachs Account

Individuals, Multi-Parties and Custodianships

ACCOUNT TYPE DEFINITIONS

Individual - An Individual account has one owner and carries only one person's name.

Joint Tenants with Rights of Survivorship ("JTWROS") - A Joint Tenants with Rights of Survivorship account has two or more owners who have agreed that if one dies, the survivor(s) automatically gain(s) ownership of the decedent's interest in the account.

Tenants in Common - A Tenants in Common account also has two or more owners. Here, however, if one dies, the decedent's interest in the account is distributed to his or her estate, not the surviving owners.

Community Property - In a Community Property account, spouses own property in common with each having an undivided one-half interest. Please consult your legal advisor for advice as to whether community property ownership is available in your state of residence.

IRA - An Individual Retirement Account. (Please complete the appropriate IRA Account Application in addition to this package.)

Custodianship (UGMA/UTMA) - An account for which you are the custodian for the benefit of a minor. When the minor reaches the applicable age of majority, the assets in the account become the minor's property. (Please complete the account holder information on behalf of the custodian.)

ADVISORY

Investment Advisory Services - In connection with this Account, you may pay commissions, spreads and/or mark-ups, mark-downs as well as an advisory fee. Please review carefully the Investment Advisory Account Information. Please see in particular page E-2 for a description and selection of Discretionary and Non-Discretionary Investment Advisory services.

BROKERAGE - SCOPE OF AUTHORIZATION

Limited Discretionary Brokerage - An account for which you have granted limited trading authorization as specified in the limited discretionary trading authorization on page H-1 to GS&Co. to supervise and direct, with full authority and at its discretion (i.e., without consulting you), the investment of the assets contained in your Brokerage Account on your behalf subject to the parameters in the limited discretionary trading authorization, and at your risk. In connection with this account, you may pay commissions, spreads and/or mark-ups, mark-downs and other brokerage fee arrangements for execution. You must complete the Authorization of GS&Co. as Agent in order to open a discretionary brokerage account.

Your account will be a brokerage account and not an advisory account. Please see the limited discretionary trading authorization on page H-1 for a description of GS&Co.'s role with respect to your limited discretionary brokerage account.

Non-Discretionary Brokerage - An account for which you make your own investment decisions and pay commissions, spreads and/or mark-ups, mark-downs and other brokerage fee arrangements for execution.

If the enclosed New Account Documentation has been completed on your behalf with the information that you provided, including the investment objectives for your account(s), we ask that you read each page of the New Account Documentation carefully to ensure that the information is accurate. If you wish to make any changes, or add additional information, please do so on the document itself. If you have any questions, please contact your Investment Professional prior to signing and dating the New Account Documentation. Should any of your information change in the future, please let us know.



Your Goldman Sachs Account

Individuals, Multi-Parties and Custodianships

CONTINUED

ACCOUNT NAME, NUMBER AND TYPE

Please provide Account Name and Number for each account you are opening with this New Account Information package. Please also check the appropriate boxes to indicate Account Type and Advisory or Brokerage status. See previous page for definitions and scope of authorization of account types.

Please provide a copy of a government-issued document such as a driver's license or passport for each account owner.

Account Name	Rafael E. and Heidi S Cruz ^A			Account Number
Check One Box	<input type="checkbox"/> Individual	<input type="checkbox"/> Community Property	<input checked="" type="checkbox"/> JTWRDS	<input type="checkbox"/> Custodianship: Minor's Date of Birth:
	<input checked="" type="checkbox"/> IRA	<input type="checkbox"/> Tenants in Common	<input type="checkbox"/> Other:	Relationship to Minor:
Check One Box	<input type="checkbox"/> Advisory		<input type="checkbox"/> Limited Discretionary Brokerage	<input checked="" type="checkbox"/> Non-Discretionary Brokerage

Account Name	Heidi S. Cruz IRA ^A			Account Number
Check One Box	<input type="checkbox"/> Individual	<input type="checkbox"/> Community Property	<input type="checkbox"/> JTWRDS	<input type="checkbox"/> Custodianship: Minor's Date of Birth:
	<input checked="" type="checkbox"/> IRA	<input type="checkbox"/> Tenants in Common	<input type="checkbox"/> Other:	Relationship to Minor:
Check One Box	<input type="checkbox"/> Advisory		<input type="checkbox"/> Limited Discretionary Brokerage	<input checked="" type="checkbox"/> Non-Discretionary Brokerage

Account Name				Account Number
Check One Box	<input type="checkbox"/> Individual	<input type="checkbox"/> Community Property	<input type="checkbox"/> JTWRDS	<input type="checkbox"/> Custodianship: Minor's Date of Birth:
	<input type="checkbox"/> IRA	<input type="checkbox"/> Tenants in Common	<input type="checkbox"/> Other:	Relationship to Minor:
Check One Box	<input type="checkbox"/> Advisory		<input type="checkbox"/> Limited Discretionary Brokerage	<input type="checkbox"/> Non-Discretionary Brokerage

Account Name				Account Number
Check One Box	<input type="checkbox"/> Individual	<input type="checkbox"/> Community Property	<input type="checkbox"/> JTWRDS	<input type="checkbox"/> Custodianship: Minor's Date of Birth:
	<input type="checkbox"/> IRA	<input type="checkbox"/> Tenants in Common	<input type="checkbox"/> Other:	Relationship to Minor:
Check One Box	<input type="checkbox"/> Advisory		<input type="checkbox"/> Limited Discretionary Brokerage	<input type="checkbox"/> Non-Discretionary Brokerage

A-2

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Personal Information

Individuals, Multi-Parties and Custodianships

ACCOUNT HOLDER NUMBER 1

First Name Heidi	MI S.	Last Name CHIZ
<input type="checkbox"/> Mr. <input checked="" type="checkbox"/> Mrs. <input type="checkbox"/> Ms. <input type="checkbox"/> Miss <input type="checkbox"/> Dr.	<input type="checkbox"/> Sr. <input type="checkbox"/> Jr. <input type="checkbox"/> III <input type="checkbox"/> IV <input type="checkbox"/> Other	
Daytime Phone	Evening Phone	
Fax Number	Other Phone (please specify)	
Date of Birth		Social Security No. (or Passport No. and Country of issuance)
E-Mail Address (please specify if case sensitive)		

Marital Status and Citizenship:

<input type="checkbox"/> Single <input checked="" type="checkbox"/> Married	<input type="checkbox"/> Other	Number of Dependents (if applicable): 0
Country of Citizenship USA	Country of Domicile USA	
If not a U.S. citizen, are you a U.S. permanent resident alien? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

Legal Residence: The address to be used for tax reporting purposes. (No P.O. boxes, please.)

Street		
City	State	
Postal Code	Country USA	

Mailing Address: Where you wish to receive any account communications in hard-copy form, if different from your legal address. Please note this must be your address and not that of a third party.

Address Line 1 SAME	
Address Line 2	
City	State
Postal Code	Country

ACCOUNT HOLDER NUMBER 2 (if applicable)

First Name Rafael	MI E.	Last Name CHIZ
<input checked="" type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms. <input type="checkbox"/> Miss <input type="checkbox"/> Dr.	<input type="checkbox"/> Sr. <input type="checkbox"/> Jr. <input type="checkbox"/> III <input type="checkbox"/> IV <input type="checkbox"/> Other	
Daytime Phone	Evening Phone	
Fax Number	Other Phone (please specify)	
Date of Birth		Social Security No. (or Passport No. and Country of issuance)
E-Mail Address (please specify if case sensitive)		

Marital Status and Citizenship:

<input type="checkbox"/> Single <input checked="" type="checkbox"/> Married	<input type="checkbox"/> Other	Number of Dependents (if applicable): 0
Country of Citizenship USA	Country of Domicile USA	
If not a U.S. citizen, are you a U.S. permanent resident alien? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

Legal Residence: The address to be used for tax reporting purposes. (No P.O. boxes, please.)

Street		
City	State	
Postal Code	Country USA	

Mailing Address: Where you wish to receive any account communications in hard-copy form, if different from your legal address. Please note this must be your address and not that of a third party.

Address Line 1 SAME	
Address Line 2	
City	State
Postal Code	Country



Personal Information

Individuals, Multi-Parties and Custodianships

CONTINUED

Securities regulations require us to ask about your employment status. If you are associated with a broker/dealer other than GS&Co., you must submit, along with your New Account Information, a letter of account approval (i.e., a "407" letter) from an authorized party within your firm, such as your compliance officer. Please include your employer's name and address as well as information as to where to send required duplicate account statements. If you work in the brokerage industry, your account cannot be opened until we receive the 407 letter.

ACCOUNT HOLDER NUMBER 1

ACCOUNT HOLDER NUMBER 2 (If applicable)

<input checked="" type="checkbox"/> Employed	<input type="checkbox"/> Retired	<input type="checkbox"/> Student
<input type="checkbox"/> Self-Employed	<input type="checkbox"/> Not Employed	

<input checked="" type="checkbox"/> Employed	<input type="checkbox"/> Retired	<input type="checkbox"/> Student
<input type="checkbox"/> Self-Employed	<input type="checkbox"/> Not Employed	

Employer and Industry: If employed, please state the name and address of your employer and the nature of the business. If you are self-employed, provide the name of your business and industry.

Employer and Industry: If employed, please state the name and address of your employer and the nature of the business. If you are self-employed, provide the name of your business and industry.

Employer Goldman Sachs & Co.
--

Employer Office of the Attorney General of Texas
--

Nature of Business Investment Management
--

Nature of Business Attorney

Position/Title (If self-employed, please provide occupation) Vice President

Position/Title (If self-employed, please provide occupation) Solicitor General
--

Address of Employer (city, state and country) 1000 Louisiana Suite 550 Houston, TX 77002
--

Address of Employer (city, state and country) P.O. Box 12548 Austin, TX 78711

If employment is not a source of wealth, please provide source of investable funds.

If employment is not a source of wealth, please provide source of investable funds.

Interest in a Public Company (this information is required to determine eligibility for Initial Public Offerings):

Interest in a Public Company (this information is required to determine eligibility for Initial Public Offerings):

Please check the appropriate boxes below and indicate ticker symbols if you or any member of your immediate household are associated with a public company, whether US or non-US, in one or more of the following capacities:

<input type="checkbox"/> Executive Officer ¹	Ticker symbol(s):
<input type="checkbox"/> Director	Ticker symbol(s):
<input type="checkbox"/> 10% shareholder	Ticker symbol(s):
<input type="checkbox"/> 5% shareholder	Ticker symbol(s):

Please check the appropriate boxes below and indicate ticker symbols if you or any member of your immediate household are associated with a public company, whether US or non-US, in one or more of the following capacities:

<input type="checkbox"/> Executive Officer ¹	Ticker symbol(s):
<input type="checkbox"/> Director	Ticker symbol(s):
<input type="checkbox"/> 10% shareholder	Ticker symbol(s):
<input type="checkbox"/> 5% shareholder	Ticker symbol(s):

¹An executive officer is defined as a company's president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function, or any other person who performs similar policy making functions for the company. If you are not sure whether you are an executive officer, please consult with your in-house counsel.

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Personal Information

Individuals, Multi-Parties and Custodianships

CONTINUED

AFFILIATION INFORMATION - ACCOUNT HOLDER NUMBER 1

As used in this paragraph, "you" means the individual owner of the account or each owner of a multi-party account. Check all applicable boxes and provide an explanation in the space provided if you or if an immediate family member (spouse, child, sister, brother, parent, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law), or other person who supports you, or whom you support to a material extent (calculated by the NASD as 25% or more of a person's income in the previous calendar year), is a person described below ("restricted persons"). If you are a "restricted person" but your beneficial interest in the accounts listed on Page A-2 is 10% or less, please check the appropriate category of "restricted person" and indicate your percentage interest in the accounts listed on Page A-2 under "Explanation" below.

- (i) An NASD member firm or other broker/dealer.
- (ii) An employee, associated person, or agent of an NASD member firm or any other broker/dealer (other than a limited purpose broker dealer defined as a broker/dealer whose authorization to engage in the securities business is limited solely to purchasing and selling investment company/variable contracts securities and direct participation program).
- (iii) A person who has authority to buy and sell securities for a bank, savings and loan association, insurance company, a retirement company, investment adviser (registered or unregistered) or collective investment account, which is defined as any hedge fund, investment partnership, investment corporation, or any other collective investment vehicle that is engaged primarily in the purchase and sale of securities, but not (i) a legal entity that is beneficially owned by immediate family members or (ii) an investment club comprising a group of friends, neighbors, business associates or others who pool their money to invest in stock or other securities and are collectively responsible for making investment decisions.
- (iv) A person who owns, directly, at least 10% of a broker/dealer (other than a limited purpose broker/dealer) or at least 25% of an entity that owns at least 10% of a broker/dealer (other than a limited purpose broker/dealer).
- (v) A person who owns, directly or indirectly, (i) at least 10% of a public reporting company that owns, directly, at least 5% of a broker/dealer (other than a limited purpose broker/dealer), or (ii) at least 25% of a public reporting company that owns at least 25% (directly or indirectly through additional intervening entities, in each of which the immediate parent owns at least 25%) of an entity that owns at least 5% of a broker/dealer (other than a limited purpose broker/dealer), in each case other than public companies that are listed on a national securities exchange or traded on the NASDAQ National Market.
- (vi) I am a "restricted person" as indicated above but my percentage interest in the accounts listed on Page A-2 is limited to _____%.

(I/We represent and warrant that I/we will inform Goldman Sachs & Co. at the time of the Offering, if a person with a beneficial interest in the account acts as a finder or in a fiduciary capacity (such as an attorney, accountant, or financial consultant) to Goldman, Sachs & Co. when it acts as Managing Underwriter in connection with an Initial Public Offering.

Explanation:

Relationship to Goldman Sachs:

Are you a GS&Co. employee or related to a GS&Co. employee?
 Yes No **Herdi Cruz**

If you are related to a GS&Co. employee, what is the name of this person?
Self

What is the nature of your relationship with this employee? (e.g., spouse, sibling, cousin, etc.)
Self / spouse: Rafael Cruz

Senior Political Figure:

Are you or is any immediate family member a senior political figure, defined as a current or former senior official in the executive, legislative, administrative, military, or judicial branches of a government (whether elected or not), a senior official of a political party, a senior executive of a government-owned commercial enterprise, corporation, business, or other entity formed by or for the benefit of such individual?
 Yes No If Yes, explanation:
Rafael E. Cruz: Solicitor General of Texas



Personal Information

Individuals, Multi-Parties and Custodianships

CONTINUED

AFFILIATION INFORMATION - ACCOUNT HOLDER NUMBER 2

As used in this paragraph, "you" means the individual owner of the account or each owner of a multi-party account. Check all applicable boxes and provide an explanation in the space provided if you or if an immediate family member (spouse, child, sister, brother, parent, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law), or other person who supports you, or whom you support to a material extent (calculated by the NASD as 25% or more of a person's income in the previous calendar year), is a person described below ("restricted persons"). If you are a "restricted person" but your beneficial interest in the accounts listed on Page A-2 is 10% or less, please check the appropriate category of "restricted person" and indicate your percentage interest in the accounts listed on Page A-2 under "Explanation" below.

- (i) An NASD member firm or other broker/dealer.
- (ii) An employee, associated person, or agent of an NASD member firm or any other broker/dealer (other than a limited purpose broker dealer defined as a broker/dealer whose authorization to engage in the securities business is limited solely to purchasing and selling investment company/variable contracts securities and direct participation program).
- (iii) A person who has authority to buy and sell securities for a bank, savings and loan association, insurance company, investment company, investment adviser (registered or unregistered) or collective investment account, which is defined as any hedge fund, investment partnership, investment corporation, or any other collective investment vehicle that is engaged primarily in the purchase and sale of securities, but not (i) a legal entity that is beneficially owned by immediate family members or (ii) an investment club comprising a group of friends, neighbors, business associates or others who pool their money to invest in stock or other securities and are collectively responsible for making investment decisions.
- (iv) A person who owns, directly, at least 10% of a broker/dealer (other than a limited purpose broker/dealer) or at least 2% of an entity that owns at least 10% of a broker/dealer (other than a limited purpose broker/dealer).
- (v) A person who owns, directly or indirectly, (i) at least 10% of a public reporting company that owns, directly, at least 5% of a broker/dealer (other than a limited purpose broker/dealer), or (ii) at least 25% of a public reporting company that owns at least 25% directly or indirectly through additional intervening entities, in each of which the immediate parent owns at least 25% of an entity that owns at least 5% of a broker/dealer (other than a limited purpose broker/dealer), in each case other than public companies that are listed on a national securities exchange or traded on the NASDAQ National Market.
- (vi) I am a "restricted person" as indicated above but my percentage interest in the accounts listed on Page A-2 is limited to _____%.

I/We represent and warrant that I/we will inform Goldman Sachs & Co. at the time of the Offering, if a person with a beneficial interest in the account acts as a finder or in a fiduciary capacity (such as an attorney, accountant, or financial consultant) to Goldman, Sachs & Co. when it acts as Managing Underwriter in connection with an Initial Public Offering.

Explanation:

Relationship to Goldman Sachs:

Are you a GSECO, employee or related to a GSECO employee?
 Yes No

If you are related to a GSECO employee, what is the name of this person?
 Heidi S. Cruz

What is the nature of your relationship with this employee? (e.g., spouse, sibling, cousin, etc.)
 Spouse

Senior Political Figure:

Are you or is any immediate family member a senior political figure, defined as a current or former senior official in the executive, legislative, administrative, military, or judicial branches of a government (whether elected or not), a senior official of a political party, a senior executive of a government-owned commercial enterprise, corporation, business, or other entity formed by or for the benefit of such individual?
 Yes No If Yes, explanation:

Self: Solicitor General of Texas



Investment Experience and Financial Information

Individuals, Multi-Parties and Custodianships

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Investment Experience and Financial Information

Individuals, Multi-Parties and Custodianships

CONTINUED

ACCOUNT HOLDER NUMBER 1

Annual income from All Sources in U.S. Dollars: Exclude income from spouse or joint account holder.

[Redacted]

Liquid Net Worth in U.S. Dollars: Exclude the value of your residence, private partnerships and other illiquid assets.

[Redacted]

Total Net Worth in U.S. Dollars: Assets minus total liabilities excluding the value of your primary residence.

[Redacted]

Are you or is this account an "Accredited Investor"? A person whose individual net worth, or joint net worth with a spouse, is over \$1 million or who had an individual income¹ in excess of \$200,000 in each of the two most recent years, or joint income with a spouse in excess of \$300,000 in each of those years and reasonably expects to reach the same income level in the current year.

[Redacted]

Will you have at least \$750,000 under management with GS&Co. at the time you fund your account?

[Redacted]

ACCOUNT HOLDER NUMBER 2: (If applicable)

Annual income from All Sources in U.S. Dollars: Exclude income from spouse or joint account holder.

[Redacted]

Liquid Net Worth in U.S. Dollars: Exclude the value of your residence, private partnerships and other illiquid assets.

[Redacted]

Total Net Worth in U.S. Dollars: Assets minus total liabilities excluding the value of your primary residence.

[Redacted]

Are you or is this account an "Accredited Investor"? A person whose individual net worth, or joint net worth with a spouse, is over \$1 million or who had an individual income¹ in excess of \$200,000 in each of the two most recent years, or joint income with a spouse in excess of \$300,000 in each of those years and reasonably expects to reach the same income level in the current year.

[Redacted]

Will you have at least \$750,000 under management with GS&Co. at the time you fund your account?

[Redacted]

¹Individual income means adjusted gross income, as reported for federal income tax purposes, less any income attributable to a spouse or to property owned by a spouse

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Account Services Information

Individuals, Multi-Parties and Custodianships

CASH SWEEP SERVICE

Pursuant to the Customer Agreement provided to you, and unless you notify us to the contrary, to the extent your account is eligible you authorize GSECo. to sweep any free credit balances in your accounts into one or more money market funds that are suitable. Please be aware that different funds will have different fees associated with them. To the extent your account is eligible, you will earn interest on free credit balances in accordance with GSECo.'s customary practice in the event you do not wish to have cash sweep.

DISCLOSURE TO ISSUERS AND NON-U.S. TAXATION AUTHORITIES

Please check the appropriate box below if you do not consent to the stated disclosure.

Disclosure to Issuers. You understand that GSECo. is required to disclose to an issuer the name, address, and position of its customers who are beneficial owners of that issuer's securities unless the customer objects. If you object, please check the box below.

I do not consent to disclosure to issuers.

Disclosure to Non-U.S. Taxation Authorities. You understand that GSECo. may disclose certain information to non-U.S. taxation authorities in an effort to reduce your withholding tax liability on certain non-U.S. source income payments. The information disclosed may consist of your name, address, tax identification number, tax domicile and the quantity of the subject foreign security(ies) you may hold. If you object, please check the box below.

I do not consent to disclosure to non-U.S. taxation authorities.

WEBSITE ACCESS

Please check the box below to indicate you want access to the GSECo. website to view your account information and/or to trade to the extent such access or ability to trade is available. You must provide your e-mail address on the Personal Information page in order to have access to these services

View through the use of electronic services

Trade through the use of electronic services, to the extent available (for non-discretionary brokerage accounts only)

Authorize a third party agent to view your accounts through the use of electronic services (Your Agent will receive a copy of the Third Party Agent Information and Agreements document)

Name of Agent(s): _____

If you are authorizing a Third Party Agent to view your accounts, please indicate to which accounts this authorization applies. If you do not know the account numbers (or they have not been assigned), please indicate the exact title of the accounts.

Authorization applies to all current and future accounts with the same account names as used in this document.

Authorization applies only to these accounts (supply numbers or exact titles): _____

ONLINE DELIVERY

By checking the box below, you agree to receive prospectuses, disclosure documents, monthly account statements and other communications from GSECo. electronically when on-line delivery is available. Unless you tell us to the contrary, each account holder is consenting and will receive all such documents by electronic delivery when available. You have read and agree to the Electronic Services Supplement to the Customer Agreement, which has important information regarding online delivery of communications. When available, GSECo. may post certain information to you on the GSECo. website, where you can view and print information. You may have to consent electronically in order to receive some or all of these communications electronically. Some of these communications may not be available electronically.

CONSENT TO ONLINE DELIVERY of prospectuses, disclosure documents, monthly account statements and other communications

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Account Services Information

Individuals, Multi-Parties and Custodianships

CONTINUED

DUPLICATE STATEMENTS AND CONFIRMATIONS

If you would like duplicate statements or confirmations sent to someone else, such as your accountant or lawyer, please indicate below. Unless you tell us to the contrary, all duplicate statements will be delivered electronically when available. Therefore, please provide the e-mail address for the person(s) you would like to receive duplicate statements.

Name and Relationship to Account		Name and Relationship to Account	
E-mail Address (please specify if case sensitive)		E-mail Address (please specify if case sensitive)	
Street		Street	
City	State	City	State
Postal Code	Country	Postal Code	Country
Would you like this person to receive:		Would you like this person to receive:	
<input type="checkbox"/> Statements only <input type="checkbox"/> Confirmations only <input type="checkbox"/> Both		<input type="checkbox"/> Statements only <input type="checkbox"/> Confirmations only <input type="checkbox"/> Both	

CONSENT TO HOUSEHOLDING

I consent to your mailing in one envelope my statement and other related communications from GS&Co. with the statement and communications to others who live at my address, including combining such information within one report. I understand that I may revoke this consent at any time at which time you will resume sending my statements and other communications to me separately.

WIRING INSTRUCTIONS

This section should be completed if you will be periodically transferring funds to your bank account.

Name of Bank or Other Recipient	Bank of America
Routing Number (ABA or Swift Number)	[REDACTED]
Address	501 Congress Austin TX 78701
Name of Account	Rafael E. and Heidi S. Cruz
Account Number	[REDACTED]
Contact Name, Telephone Number and E-mail Address (if applicable)	
If these instructions do not apply to all accounts you are opening with this package, please indicate exceptions below:	

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Account Services Information

Individuals, Multi-Parties and Custodianships

CONTINUED

ORDERS PLACED BY OTHERS

If you are authorizing someone to place orders on your behalf in connection with your account(s), please complete the Authorization of Third Party as Agent.

CUSTODIAL INFORMATION

Unless you check the box below, GS&Co. will serve as custodian for your brokerage and Advisory Account. (Discretionary and Advisory IRAs must have GS&Co. as custodian.)

<input type="checkbox"/> Third Party as Custodian. You want the entity named below to serve as custodian for your brokerage and/or Advisory Account.
Name of Custodian
Account Number at Custodian
Contact Name
Address
Telephone
If these instructions do not apply to all accounts you are opening with this package, please indicate exceptions below

CONSENT TO RECEIVE FAXES, TELEPHONE CALLS AND E-MAIL FROM GS&CO.

By providing your current facsimile and telephone numbers and your e-mail addresses, and any successor or additional facsimile and telephone numbers and e-mail addresses, to GS&Co. and by signing the Account Terms and Conditions, you hereby consent to receipt of any faxes, telephone calls or e-mail from GS&Co. in connection with your account(s), including but not limited to the offer of any products or services for such accounts. You understand that you may revoke your consent at any time in writing directed to your Investment Professional.

SIGNATURE

I affirm that I have carefully reviewed all of the Personal Information on pages B-1, B-2, and B-3, the Investment Experience and Financial Information set forth on pages C-1 and C-2 and affirm that it is true and accurate. Additionally, by my signature below, I affirm consent to online delivery on page D-1, if elected, the Consent to Householding on page D-2, as well as the Consent to Receive Faxes, Telephone Calls and E-Mail from GS&Co. on page D-3.

Signature - Account Holder Number 1 X	Date 1/17/16
Print Name Heidi Cruz	

Signature - Account Holder Number 2 X	Date 1/17/16
Print Name RAFAEL E. CRUZ	

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Brokerage Account Information

Individuals, Multi-Parties and Custodianships

BROKERAGE ACCOUNT INVESTMENT OBJECTIVES

Indicate the investment objective for each limited discretionary and non-discretionary brokerage account. Indicate your choice based on the definitions of Conservative, Balanced, Capital Appreciation, and Speculative Investments as defined below. GS&Co. cannot guarantee that any particular investment or your investments generally will achieve your investment objective.

Capital Appreciation - Account primarily seeks long-term capital appreciation. Account may also include some short term trading and margin (leverage). Investor is willing to assume a higher risk commensurate with investor's expected returns and understands that there is no guarantee that the investments, either individually or in the Account as a whole, will attain such returns.

Speculative Investments - Please check the appropriate box in conjunction with your choice of Capital Appreciation or Balanced if you wish to make speculative investments, engage in opportunistic trades, including but not limited to uncovered option trading (both listed and over-the counter), day trading and other short term trading, and purchase for sign exchange, commodities, futures and non-principal protected instruments. You understand and acknowledge that the foregoing investments involve a high degree of risk and are willing and able to bear the full risk of loss of principal invested in such investments.

Additionally, accounts that may make significant investments in alternative investments must check Speculative.

Balanced - Account primarily seeks long-term capital appreciation and current income. Account may also include a limited amount of short-term trading and margin (leverage). Investor is willing to assume moderate to high risk commensurate with investor's expected returns and understands that there is no guarantee that the investments, either individually, or in the Account as a whole, will attain such returns.

Conservative - Account primarily seeks current income and, secondarily, moderate capital appreciation. The use of margin will be permitted, but only to facilitate the use of certain cash management services. Investor is willing to assume low to moderate risk commensurate with investor's expected returns and understands that there is no guarantee that the investments, either individually or in the Account as a whole, will attain such returns.

Brokerage Account Investment Objectives). Provide complete account name, indicate whether the account is Discretionary or Non-Discretionary, and choose one investment objective for each account. If you choose "Balanced" or "Capital Appreciation" you may also check "Speculative" if appropriate.

Account Name Heidi S and Rafael E Cruz	<input type="checkbox"/> Ltd. Disc. <input type="checkbox"/> Non-Disc.	<input type="checkbox"/> Capital Appreciation <input checked="" type="checkbox"/> Speculative Investments	<input type="checkbox"/> Balanced <input type="checkbox"/> Conservative
Account Name Heidi S Cruz IRA	<input type="checkbox"/> Ltd. Disc. <input type="checkbox"/> Non-Disc.	<input type="checkbox"/> Capital Appreciation <input checked="" type="checkbox"/> Speculative Investments	<input type="checkbox"/> Balanced <input checked="" type="checkbox"/> Conservative
Account Name	<input type="checkbox"/> Ltd. Disc. <input type="checkbox"/> Non-Disc.	<input type="checkbox"/> Capital Appreciation <input type="checkbox"/> Speculative Investments	<input type="checkbox"/> Balanced <input checked="" type="checkbox"/> Conservative
Account Name	<input type="checkbox"/> Ltd. Disc. <input type="checkbox"/> Non-Disc.	<input type="checkbox"/> Capital Appreciation <input checked="" type="checkbox"/> Speculative Investments	<input type="checkbox"/> Balanced <input type="checkbox"/> Conservative

Fees and execution charges may be negotiated and you may pay more or less fees, commissions, commission equivalents, mark-ups and mark-downs than similar clients. Different investments may result in different costs, and GS&Co. and its personnel may be compensated more or less depending on the investment strategy, fees and commissions.



Brokerage Account Information

Individuals, Multi-Parties and Custodianships

CONTINUED

MARGIN ACCOUNT AND LISTED OPTION TRANSACTIONS

Please check the boxes below to indicate that you want the ability to use margin (i.e., the ability to borrow money from GS&Co., to purchase securities or to make other purchases) and the ability to engage in listed option transactions.

You want to be able to borrow for investments and/or to engage in other margin transactions such as short selling. Please refer to the enclosed Margin Risk Disclosure Statement, the Margin Supplement and the Interest Charges and Margin Requirements in the Account Agreements for important information. (For non-ERISA and non-IRA clients only.)
If this ability does not apply to all brokerage accounts you are opening with this package, please indicate exceptions below:

You want to be able to engage in listed option transactions in connection with your brokerage accounts. Please refer to the enclosed Options Disclosure Document for important information. If you want to engage in uncovered option transactions, you represent that you have an annual income over \$100,000 and a net worth over \$750,000.
If this ability does not apply to all brokerage accounts you are opening with this package, please indicate exceptions below:

OVER THE COUNTER (OTC) OPTION TRANSACTIONS

Please check the box below to indicate that you want the ability to engage in OTC option transactions.

You want to be able to engage in OTC option transactions in connection with your brokerage accounts. You represent that you are an Accredited Investor as defined on page C-2. Please refer to the OTC Options Agreements in the Account Agreements package.
If this ability does not apply to all brokerage accounts you are opening with this package, please indicate exceptions below:

FX TRADING

Please check the box below to indicate that you want the ability to engage in FX trading for hedging or speculation.

You want to be able to enter into Foreign Exchange and FX Option Transactions (other than spot transactions) for the purpose of hedging. Please refer to the FX Trading Supplement in the Account Agreements package.
If this ability does not apply to all brokerage accounts you are opening with this package, please indicate exceptions below:

You want to be able to enter into Foreign Exchange and FX Option Transactions (other than spot transactions) for the purpose of speculation and hedging. You represent that you fully understand the risks of currency speculation and are able to bear those risks and you further represent that you have a net worth of at least \$50 million. Please refer to the FX Trading Supplement in the Account Agreements package.
If this ability does not apply to all brokerage accounts you are opening with this package, please indicate exceptions below:

SIGNATURE

I agree to the Brokerage Account Information, including the Brokerage Account Investment Objectives, margin account and listed options transactions, if elected, OTC option transactions, if elected, and FX trading, if elected.

Signature - Account Holder Number 1 X	Date 1/16/10
Print Name Heidi Cruz	

Signature - Account Holder Number 2 X	Date 1/17/10
Print Name Rafael E. Cruz	

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Account Terms and Conditions and Signature Page

Individuals, Multi-Parties and Custodianships

Please read these terms and conditions, the Customer Agreement and all other applicable supplements in the Account Agreements provided to you carefully before accepting these agreements. Sections 8 and 9 apply only if you have entered into the Investment Advisory Supplement.

1. You are bound by the terms of the enclosed Customer Agreement and all other applicable supplements in the Account Agreements provided to you. You acknowledge that along with this New Account Information, you have received the Customer Agreement and any other applicable supplements in the Account Agreements provided to you. You represent that you have read and understood the terms set forth in all of these materials, and you agree that they are incorporated by reference as part of your agreement with GSSCo, and that you and your Account are bound by them. The defined terms in this New Account Information have the same meaning as in the Customer Agreement and other applicable supplements in the Account Agreements provided to you.

2. Transactions Prior to Funding. You must deposit sufficient Securities or Other Property in your Account on or before the applicable settlement date, if you fail to deposit sufficient Securities or Other Property into your Account prior to that time, GSSCo may, among other things, cancel your order, liquidate your position and close your Account. You agree that you will be solely responsible for and will indemnify GSSCo for any expenses or losses in connection with any transaction made prior to depositing funds in your Account, including reasonable attorney's fees and costs of collection. Your ability to execute transactions without sufficient Securities or Other Property in your Account will be at the sole discretion of GSSCo, in all respects, including the size, frequency or nature of such transactions.

3. Use of Electronic Services. You agree that if you use the Electronic Services made available by GSSCo, you will also read the disclosures and disclaimers made available via the Electronic Services Supplement, and you agree to be bound by those disclosures and disclaimers. Your continued use of the Electronic Services will be deemed an acceptance of the disclosures and disclaimers, as amended from time to time. You agree to be bound by any agreements entered into electronically (through clicks or other actions) by any person using you (or any of your Users') User ID and Password(s). You further agree that you will not contest the legally binding nature, validity or enforceability of any of these agreements, legends or disclosures based on the fact that the terms were accepted electronically. Any such agreements and transactions entered into electronically will be deemed to be "in writing" and to have been "signed" by you with the same effect as a manual signature (and any electronic record of such agreements entered into online will be deemed to be "in writing").

4. Certification of Information. You represent to GSSCo that all information provided by you now and in the future, including in this New Account Information, is accurate and complete

and relates to you, and you agree to notify GSSCo, immediately of any changes to this information. You further agree to supply any information reasonably requested at any time by GSSCo.

5. Credit and Background Check. You authorize GSSCo, and any agent or service provider to use, verify and confirm any of the information that you provide, including obtaining reports concerning your credit standing and business conduct (and your spouse's if you live in a community property state), and to share all such information with GSSCo's successors, assigns, agents and service providers to determine your eligibility for an Account or any feature or otherwise. Upon your written request, we will inform you whether we have obtained a consumer report about you, and, if so, we will provide you with the name and address of the reporting agency that furnished the report.

6. REAL TIME QUOTES. BY EXECUTING THIS AGREEMENT, YOU AGREE:

A. THAT YOU HAVE READ, AND AGREE TO BE BOUND BY, THE NASDAQ SUBSCRIBED AGREEMENT, THE AGREEMENT FOR MARKET DATA DISPLAY SERVICES, AND THE OPTIONS PRICE REPORTING AUTHORITY AGREEMENT FOR DIAL-UP MARKET DATA SERVICE AND THE EUROPEAN AND ASIAN AGREEMENTS (THE "EXCHANGE AGREEMENTS"), PROVIDED WITH THE ACCOUNT AGREEMENTS;

B. THAT GSSCO IS NOT AN AGENT OF THE EXCHANGES AND IS NOT AUTHORIZED TO ADD TO OR DELETE FROM THE EXCHANGE AGREEMENTS AND IS NOT AUTHORIZED TO MODIFY ANY PROVISION OF THE EXCHANGE AGREEMENTS; AND

C. THAT NO PROVISION HAS BEEN ADDED TO OR DELETED FROM THE EXCHANGE AGREEMENTS AND THAT NO MODIFICATIONS HAVE BEEN MADE TO THEM, YOU AND ANY PERSON EXECUTING ON YOUR BEHALF WARRANT THAT YOU ARE LEGALLY ABLE TO UNDERTAKE THE OBLIGATIONS SET FORTH IN, AND THE SIGNATORY IS DULY AUTHORIZED TO BIND YOU TO, THE EXCHANGE AGREEMENTS.

7. With respect to the Managed Account Strategies, if applicable, you appoint the investment manager(s) ("Manager") named in the New Account Information as your agent and attorney-in-fact with discretionary authority to manage the assets in the relevant strategy in accordance with the terms of the Investment Manager Agreement. By signing below, you acknowledge having received a copy of GSSCo's Managed Account Strategies Disclosure Brochure (or Schedule H to GSSCo's Form ADV or a substitute) and the Form ADV, Part II (or a substitute) for the Manager.

8. Contact Information for Cross Transactions and Principal Transactions (for non-ERISA accounts only). You direct us to send all notices of Cross Transactions and Principal Transactions to the e-mail address specified in the New Account Information as described in Section 3 of the Investment Advisory Supplement. You must notify us if you prefer to have such notices sent to the fax number specified in the New Account Information.

9. With respect to Futures and Futures Options transactions executed by GSSCo, pursuant to the Investment Advisory Supplement, (if applicable for non-ERISA accounts only) you direct and authorize GSSCo, in its capacity as investment advisor and not as Futures Commission Member ("FCM") as your agent, investment adviser ("Advisor") and attorney-in-fact to execute the GSSCo Futures and Options Account Agreement (the "Futures Agreement") on your behalf and purchase and sell futures contracts and/or options on futures contracts traded on contract markets, boards of trade, national securities exchanges, alternative trading systems, derivatives transaction execution facilities or other markets (collectively, "contracts"), in accordance with the terms and conditions as set forth in the Account Agreement with GSSCo, acting as the FCM and you agree to be bound by the terms of the Account Agreement to the same extent as if you had executed such Agreement directly.

You further expressly acknowledge and agree that you have received, read and understood, and retained a copy of the Risk Disclosure for Futures and Options, which includes the disclosures required by Commodity Futures Trading Commission ("CFTC") Rules 1.55, 30.6, 32.7 and 192.10(c), a disclosure pursuant to CFTC Rule 1.46(e)(7) and authorization pursuant to CFTC Rules 1.55(d)(1) and 1.55(d)(2).

With respect to commodity derivatives transactions executed by GSSCo, pursuant to the Investment Advisory Supplement, if applicable, pursuant to an exemption from the Commodity Futures Trading Commission ("CFTC") in connection with accounts of "Qualified Eligible Persons", this account document is not required to be, and has not been, filed with the CFTC. The CFTC does not pass upon the merits of particular trading in a trading program or upon the adequacy or accuracy of commodity trading advisor disclosure. Consequently, the CFTC has not reviewed or approved the trading program adapted hereunder or any brochure or account document.

You are aware that the Futures and Options Account Agreement which you have directed the Advisor to sign on your behalf grants GSSCo, acting as FCM a number of rights, and imposes certain obligations on you, with respect to its account with the FCM, for example, GSSCo is granted a lien on, and a right to set off against, any of its



Account Terms and Conditions and Signature Page

Individuals, Multi-Parties and Custodianships

CONTINUED

Assets held in other GSEC accounts maintained by you, if any, in order to satisfy any indebtedness arising out of the trading activity, and GSEC has the right to liquidate your Account in the event of a default or if GSEC deems such liquidation necessary for its protection. In addition, you will remain liable for any amounts owed to GSEC, including any debit balances, and any commissions as a result of the Adviser's trading on your behalf.

CTFC regulations require GSEC to provide each hedge customer the opportunity to issue instructions to liquidate or transfer to another commission merchant all hedging positions in the unitary event that GSEC becomes bankrupt. GSEC, as your investment adviser, will designate whether to liquidate or transfer all hedging positions in the event of GSEC's bankruptcy. If you wish to make your own designation, please advise your GSEC representative in writing of your designation. You acknowledge that no assurance can be given that any hedging positions will be transferred if you have given such instruction.

YOU UNDERSTAND AND AGREE THAT YOU ARE AUTHORIZING THE ADVISER AND THE FCM TO TRANACT FUTURES FOR SPECULATIVE AND/OR HEDGING AND RISK MANAGEMENT PURPOSES AT YOUR RISK. The FCM is authorized to follow the instructions of the Adviser in every respect concerning any and all accounts carried by the FCM on your behalf and in your name (the "Futures Accounts"). Without limitation of the foregoing, the FCM is hereby authorized, upon the instruction of the Adviser, to execute and clear transactions in Contracts as instructed by the Adviser, to transfer money, securities or other property to or from the Futures Accounts and to make or receive delivery of the commodities

underlying the Contracts traded by the Adviser on behalf of the undersigned, all on behalf and in the name of you on the same manner, to the same extent and with the same force and effect as you could act directly. Furthermore, the FCM may upon the instruction of the Adviser and upon execution of a separate written give-up agreement which may be executed by the Adviser on your behalf accept from other brokers Contracts executed by such brokers on the order of the Adviser to be given up to the FCM for clearance or carrying. This authorization (i) shall be continuing and shall remain in full force and effect until the FCM's receipt of written notice of your revocation thereof (provided, however, that such revocation shall not be effective with respect to open positions or outstanding orders submitted by the Adviser but not yet executed; (ii) shall have no effect to the benefit of the FCM and its successors; (iii) shall be binding upon you, your successors and legal representatives; and (iv) is in addition to (and in no way limits or restricts) any rights which the FCM may have under any other agreement or agreements between you and the FCM.

Without prior notice to you, you authorize GSEC, and its personnel and any floor broker acting on directions of the Adviser for the Account to take the other side of your transactions through any account of such person subject to its being executed at prevailing prices in accordance with the Commodity Exchange Act and the rules and regulations promulgated thereunder, and applicable exchange rules.

10. Conflicts of Interest. GSEC acts as an investor, investment banker, research provider, investment manager, financier, adviser, market maker, trader, prime broker, lender, agent and principal, and has other direct or indirect inter-

ests in the global fixed income, currency, commodity, equity and other markets and for companies in which your Account may invest. GSEC and its personnel, including investment professionals assigned to your Account, may take positions in securities or take actions for their own accounts which conflict with positions in your Account. GSEC may act as broker or counterparty to any transaction executed for your account and earn commissions, commission equivalents, mark-ups and mark-downs as detailed in Section 20 of the Customer Agreement and, if you are obtaining advisory services, in Section 5 of the Investment Advisory Supplement, subject to applicable law. You acknowledge the risks and conflicts of interest disclosures described here and in Section 17 of the Customer Agreement and, if you are obtaining advisory services, in Section 13 of the Investment Advisory Supplement and in GSEC's Form ADV, Schedule H or other disclosure documents that have been provided to you. Notwithstanding such actual or potential conflicts of interest you have determined to enter into this Agreement with GSEC.

11. By signing below, you agree to be bound by the terms and conditions of the New Account Information and the Account Agreements provided to you and dated as indicated below.

September 2005

12. A predispute arbitration clause is contained in Section 43 (page 9) of the Customer Agreement.

SIGNATURE

Signature - Account Holder Number 1	Date
X <i>[Signature]</i>	11/17/04
Print Name Heidi Cruz	

Signature - Account Holder Number 2	Date
X <i>[Signature]</i>	11/17/04
Print Name Rafael E. Cruz	

For GSEC Use Only:

Name of GSEC Professional Heidi Cruz	
Signature	Date
X <i>[Signature]</i>	4/2/05

Name of Manager Approving Account Gordon Kras	
Signature	Date
X <i>[Signature]</i>	4/2/05

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Customer Agreement

Primary Account Agreements

1. General Agreement. This Agreement sets forth the respective rights and obligations of GS&Co. and you in connection with each of your Accounts (including Accounts held individually, jointly or in other combinations). It includes the application that you submit to open your Account and the supplements, statements, disclosures and other agreements (each a "Supplement") for the products and services for which you have applied. GS&Co. reserves the right to amend or terminate any such Supplement at any time. Both the Agreement and any applicable Supplement are subject to GS&Co.'s approval. This Agreement supersedes any previous agreements made by you individually with GS&Co. relating to any of your Accounts, and if your Account is held jointly or in other combinations, it supersedes any previous agreements made by the same parties to this Agreement with GS&Co. relating to your Accounts, to the extent the subject matter is covered in this Agreement. GS&Co. reserves the right to decline any request to open an Account or for any features.

"GS&Co.," "we," "us" or "our" means Goldman, Sachs & Co., its present and future affiliates, and their respective partners, officers, directors, employees and agents. "You" or "your" means each natural person or legal entity indicated in the title to the Account and on whose behalf this Agreement has been signed. Your "Account" refers to each brokerage or other account, including managed and custody accounts, at GS&Co. that is established in your name alone, or in your name together with others, or in which you have a beneficial interest. The basic brokerage account provided by GS&Co. will be a "cash account," in which you make all purchases for cash settlement, without credit. You may apply and be approved for a "margin account," in which you will be able to make purchases with funds borrowed, or to receive credit, from GS&Co., using eligible securities or cash as collateral for the credit. You may be charged execution charges (such as commissions, commission equivalents, mark-ups, mark-downs and spreads) as described in this Agreement. A "commission" generally is the amount charged by a broker for purchasing or selling securities or other investments as an agent for the customer. A "commission equivalent" is an amount charged by a dealer for purchasing or selling securities or other investments in certain "riskless principal" transactions (i.e. a transaction in which a dealer, after having received an order to buy from a customer, purchases the security from another person to offset a contemporaneous sale to such customer or, after having received an order to sell from a customer, sells the security to another person to offset a contemporaneous purchase from such customer). A "mark-up" is the price charged to a customer, less the prevailing market price and a "mark-down" is the prevailing market price, less the amount a dealer pays to purchase the security from the customer. The "spread" for a security is the difference between the current purchase or bid price (that is, the price someone is willing to pay) and the current ask or offer price (that is, the price at which someone is willing to sell). The difference or spread narrows or widens in response to the supply and demand levels of the security. In addition, in connection with your

Account, you and persons designated by you may be provided with access to "Electronic Services," which include the various websites owned and operated by GS&Co., through which it offers brokerage, financial and other services, as well as any other electronic means by which GS&Co. may now or in the future offer these services.

2. Ownership. You agree that all Securities and Other Property (as defined below) held for your Account will be held in the manner indicated in the title to the Account, with all the legal and equitable rights and subject to all the obligations and conditions that the form of ownership imposes. You represent that no one has an interest in your Account except you or others that you have previously disclosed to GS&Co. as part of your application to open an Account or in a manner authorized by GS&Co. "Securities and Other Property" includes cash, stocks, bonds, mutual funds, money market funds, financial instruments, options and related contracts and any other securities, whether certificated or uncertificated, securities entitlements, securities accounts, commodity contracts, commodity accounts, currency contracts, swap contracts and related options thereon, and any other assets and the proceeds thereof. This definition includes Securities and Other Property currently or in the future held, carried or maintained by GS&Co., or in the possession or control of GS&Co., in or for any of your current or future accounts, including any account in which you may have an interest, and regardless of the purpose for which the securities and other property are so held, carried, maintained, possessed or controlled.

3. Services Provided by GS&Co. You agree that GS&Co. may provide certain brokerage or other services to you with or through its affiliates. This Agreement is entered into by GS&Co. on its own behalf and on behalf of its affiliates. All rights and limitations of liability and obligations of GS&Co. in this Agreement are for the benefit of GS&Co. and each of its present and future affiliates. You further agree and irrevocably appoint GS&Co. with full power as your true and lawful attorney-in-fact, to the extent permitted by law, for the purpose of carrying out the provisions of this Agreement.

4. Credit and Background Check. You authorize GS&Co. and any agent or service provider to use, verify and confirm any of the information that you provide, including conducting background checks, obtaining reports concerning your credit standing and business conduct (and your spouse's if you live in a community property state) and to share all such information with their successors, assigns, agents and service providers to determine your eligibility for an Account or any feature or otherwise. Upon your written request, we will inform you whether we have obtained credit reports, and, if so, we will provide you with the name and address of the reporting agency that furnished the reports. You agree that, without notifying you, we may request a new credit report in connection with any review, extension, or renewal of the Account. You further agree that GS&Co. may submit information reflecting on your credit record to a credit reporting agency. You authorize GS&Co. to share with its affiliates credit bureau information, informa-

tion contained in your application to open an Account, information obtained from third parties and similar information, or to use such information consistent with GS&Co.'s privacy policy.

5. Monitoring of Account. You acknowledge and agree that GS&Co. may monitor and record your use of the Electronic Services and any communications between GS&Co. and you that occur over the Internet or any other network, including telephone, cable and wireless networks, and that it may use the resulting information for internal purposes or as may be required by applicable law. Any such monitoring and recording will be carried out consistent with GS&Co.'s privacy policy.

6. Transfer of Assets Into Account. You agree that all Securities and Other Property deposited in your Account will be in Good Deliverable Form, unless GS&Co. otherwise approves. "Good Deliverable Form" means freely transferable, properly endorsed, registered and fully negotiable. You agree to give GS&Co. timely information relating to any restrictions on the transfer of any Securities and Other Property, including restrictions on the transfer of restricted or control securities referred to in Section 7. You further agree to timely satisfy all legal transfer requirements and to furnish all necessary documents before and after securities are transferred.

7. Rule 144 or 145(d) Restricted or Control Securities. Prior to placing an order for the sale or transfer of any securities subject to Rule 144 or 145(d) under the Securities Act of 1933 or any other rule relating to restricted or control securities or securities that may otherwise be contractually restricted, you agree that you will advise GS&Co. of the status of the securities and furnish GS&Co. with the necessary documents (including opinions of legal counsel, if GS&Co. so requests) or any other required waivers or consents to satisfy legal transfer requirements. These securities may not be sold or transferred until they satisfy legal transfer requirements. Even if the necessary documents are furnished in a timely manner, there may be delays in the processing of these securities, which may result in delays in the delivery of securities and the crediting of cash to your Account. You are responsible for any delays, expenses and losses associated with compliance or failure to comply with all of the requirements and rules relating to contractually restricted, restricted or control securities.

8. Withdrawals. GS&Co. reserves the right to require that you make requests for any withdrawals from your Account in writing.

9. Order Execution. You agree that, subject to the terms of an order, the method of execution of that order is in the sole discretion of GS&Co. GS&Co. may reject and pre-review your orders or take any other action (which may delay the execution of the order) for any reason, including market conditions, system outages, capacity limitations, pending proprietary or customer orders in the same security, regulatory restrictions and restrictions imposed by GS&Co. with respect to transactions in the particular security.

You authorize GS&Co. to submit your orders jointly with orders for other customers, and you acknowledge that the average price for executions resulting from bunched orders will be